

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Liberty Cablevision of Puerto Rico, Inc.	)	File No.: EB-FIELDSCR-13-00010718
	)	NAL/Acct. No.: 201432680003
Owner of Antenna Structure No. 1011909	)	FRN: 0004984753
	)	
Vega Baja, Puerto Rico	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 19, 2014****Released: March 19, 2014**

By the Resident Agent, San Juan Office, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Liberty Cablevision of Puerto Rico, Inc. (Liberty), owner of antenna structure number 1011909 (the Antenna Structure) located in Vega Baja, Puerto Rico, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 17.47(a) and 17.51(a) of the Commission's rules (Rules)<sup>1</sup> by failing to exhibit required antenna structure lighting and monitor the Antenna Structure's lights. We conclude that Liberty is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. According to the ASR database, the Antenna Structure stands 61.6 meters in height above ground level and is required to be lighted with red obstruction lighting.<sup>2</sup> On August 26 and 28, 2013, agents from the San Juan Office observed the Antenna Structure at night and found it was unlit.<sup>3</sup> On August 29, 2013, an agent from the San Juan Office contacted Liberty for more information, but it was unaware of the lighting outage.

3. On September 9, 2013, the San Juan Office issued a Notice of Violation (*NOV*) to Liberty concerning its failure to exhibit the required antenna structure lighting.<sup>4</sup> In its response to the *NOV*,<sup>5</sup> Liberty

<sup>1</sup> 47 U.S.C. § 303; 47 C.F.R. §§ 17.47(a), 17.51.

<sup>2</sup> See Antenna Structure Registration database for antenna structure number 1045635; see also 47 C.F.R. § 17.21 (requiring antenna structures more than 60.96 meters in height to be painted and lighted).

<sup>3</sup> On August 27, 2013, an agent from the San Juan Office contacted the Federal Aviation Administration and learned that no Notice to Airmen (NOTAM) had been issued for the Antenna Structure. See 47 C.F.R. § 17.48 (requiring antenna structure owners to notify the FAA immediately of any known outages of tower lighting lasting more than 30 minutes). The agent informed the FAA of the lighting outage and the FAA issued a NOTAM for the Antenna Structure on August 27, 2013.

<sup>4</sup> See *Liberty Cablevision of Puerto Rico, Inc.*, Notice of Violation, V201332680007 (Sept. 9, 2013).

stated that the lighting may have been damaged in a recent storm and that it had repaired the Antenna Structure lighting. Liberty also stated that it established a protocol to monitor the Antenna Structure lights on a daily basis.<sup>6</sup>

### III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>7</sup> Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>8</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>9</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>10</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>11</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>12</sup>

#### A. Failure to Monitor Antenna Structure Lighting and Exhibit Required Obstruction Lighting on the Antenna Structure

5. Section 303(q) of the Act states that antenna structure owners shall maintain the lighting of antenna structures as prescribed by the Commission.<sup>13</sup> Section 17.47(a)(1) of the Rules requires antenna structure owners to observe the lights on antenna structures visually once every 24 hours or alternatively to install and properly maintain an automatic alarm system designed to detect any failure of

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<sup>5</sup> See Letter from John Conrad, Counsel for Liberty Cablevision of Puerto Rico, Inc., to San Juan Office (Sept. 30, 2013) (on file in EB-FIELDSCR-13-00010718) (*NOV Response*).

<sup>6</sup> *Id.*

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 U.S.C. § 312(f)(1).

<sup>9</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) . . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

<sup>10</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>11</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>12</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

<sup>13</sup> 47 U.S.C. § 303(q).

such lights and to provide indication of such failure to the owner.<sup>14</sup> Section 17.51(a) of the Rules states that “[a]ll red obstruction lighting shall be exhibited from sunset until sunrise unless otherwise specified.”<sup>15</sup>

6. The evidence in this case is sufficient to establish that Liberty violated Section 303(q) of the Act and Sections 17.47(a) and 17.51(a) of the Rules. The Antenna Structure is 61.6 meters above ground in overall height and is required to be lit with red obstruction lighting at night.<sup>16</sup> On August 26 and August 28, 2013, agents from the San Juan Office observed that the Antenna Structure was not lighted at night. On August 29, 2013, Liberty admitted that it was unaware of the lighting outage. In response to the *NOV*, Liberty stated that it repaired the Antenna Structure lighting and established a protocol to monitor the Antenna Structure lights on a daily basis.<sup>17</sup> Because it was unaware of the lighting outage on August 29, 2013 and stated in response to the *NOV* that it established a process to monitor the structure lights visually, we conclude Liberty was not monitoring the Antenna Structure lights as required prior to August 29, 2013. Therefore, based on the evidence before us, we find that Liberty apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.47(a) and 17.51(a) of the Rules by failing to monitor the Antenna Structure lighting and exhibit the required red obstruction lighting on the Antenna Structure.

#### B. Proposed Forfeiture

7. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to comply with prescribed lighting requirements is \$10,000.<sup>18</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>19</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Liberty is apparently liable for a total forfeiture in the amount of \$10,000.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission’s rules, Liberty Cablevision of Puerto Rico, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 303(q) of the Act and Sections 17.47(a) and 17.51(a) of the Commission’s rules.<sup>20</sup>

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission’s rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Liberty Cablevision of Puerto Rico, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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<sup>14</sup> 47 C.F.R. § 17.47(a)(a).

<sup>15</sup> 47 C.F.R. § 17.51(a).

<sup>16</sup> See *supra* note 2.

<sup>17</sup> *NOV Response* at 1.

<sup>18</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>19</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>20</sup> 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.47(a), 17.51(a).

10. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Liberty Cablevision of Puerto Rico, Inc. shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>21</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

11. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>22</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.<sup>23</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan Office, US Federal Building Room 762, San Juan, PR 00918-1731, and include the NAL/Acct. No. referenced in the caption. Liberty Cablevision of Puerto, Inc. also shall e-mail the written response to SCR-Response@fcc.gov.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

<sup>21</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>22</sup> See 47 C.F.R. § 1.1914.

<sup>23</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Liberty Cablevision of Puerto Rico, Inc. at POB 192296 San Juan, PR 00919-2296.

FEDERAL COMMUNICATIONS COMMISSION

William Berry  
Resident Agent  
San Juan Office  
South Central Region  
Enforcement Bureau